

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

-vs-

CHRISTOPHER SIDNEY STOCKEN,  
JOSHUA JOHN BIRD,  
Defendants.

NO. CR-11-0102-WFN-1  
CR-11-0102-WFN-2

ORDER

A pretrial conference and motion hearing was held April 26, 2012. The Defendants, who are in custody, were present. Mr. Stocken was represented by Douglas Phelps; Mr. Bird was represented by Robert Seines; Assistant United States Attorney Timothy Ohms represented the Government. The Court addressed Defendants' Motion for Disclosure of 404(b) and 609 Material (ECF No. 194) and Motion to Dismiss (ECF No. 176). The Government reported that notice has been given regarding the Motion for Disclosure. The parties estimate a trial time of three to four days.

The Court has reviewed the file and motions and is fully informed. This Order is entered to memorialize and supplement the oral rulings of the Court. Accordingly,

**IT IS ORDERED** that:

1. Defendant's Motion for Disclosure of 404(b) and 609 Material, filed April 6, 2012, **ECF No. 194**, is **GRANTED**.
2. Defendants' Motion to Dismiss, filed March 30, 2012, **ECF No. 176**, is **DENIED** for the reasons stated at the hearing.

1           3. The trial date is **RESET in time only to June 11, 2012, at 9:30 a.m., in Spokane,**  
2 Washington.

3           4. The final pretrial conference and motion hearing is **RESET in time only to**  
4 **June 11, 2012, at 8:30 a.m., in Spokane,** Washington.

5           5. Trial briefs, motions in limine, requested voir dire and a set of proposed **JOINT**  
6 **JURY INSTRUCTIONS** shall be filed and served on or before **May 29, 2012.**

7           Jury instructions should only address issues that are unique to this case, and shall  
8 include instructions regarding the elements of each claim, any necessary definitions and a  
9 proposed verdict form.

10           The Joint Proposed Jury Instructions shall include:

11           (a) The instructions on which the parties agree; and

12           (b) Copies of instructions that are disputed (i.e., a copy of each party's proposed  
13 version of an instruction upon which they do not agree). All jury instructions from the most  
14 current edition of the Ninth Circuit Manual of Model Jury Instructions may be proposed by  
15 number. The submission of the Joint Proposed Jury Instructions will satisfy the requirements  
16 of LR 51.1(c).

17           Each party shall address any objections they have to instructions proposed by  
18 any other party in a memorandum. The parties shall identify the specific portion of any  
19 proposed instruction to which they object and shall elaborate the basis for the objection.  
20 Objections asserting that an instruction sets forth an incorrect statement of law shall describe  
21 the legal authority that supports this objection. Failure to file an objection and supporting  
22 argument may be construed as consent to the adoption of an instruction proposed by another  
23 party.

24           6. The parties are requested to submit courtesy copies of witness and exhibit lists to  
25 the Court no later than **12:00 noon the Thursday before trial.**

26           7. The following procedures shall be utilized at trial:

1 (a) The Court will conduct the majority of jury voir dire but allow counsel 10  
2 minutes to ask additional questions or to do more in depth exploration of issues raised by the  
3 Court;

4 (b) A total of 14 jurors will be selected. Plaintiff shall have 7 peremptory  
5 challenges; Defendant shall have 11 peremptory challenges. The challenges shall be  
6 exercised simultaneously.

7 (c) Regular trial hours shall be from 8:30 a.m. to 12:00 noon, and 1:00 to 4:30  
8 p.m.;

9 (d) The jurors will be provided with notebooks for note-taking and a copy of  
10 preliminary instructions;

11 (e) Documents published to the jury by counsel shall be collected at the  
12 conclusion of trial each day or following a witness's testimony regarding the published  
13 document;

14 (f) Examination of witnesses shall be limited to direct, cross, redirect and recross.  
15 FED. R. EVID. 611(a);

16 (g) Counsel are encouraged to limit requests for sidebars by anticipating legal and  
17 evidentiary issues so that the issues may be addressed before trial begins each day, during  
18 the lunch hour, or after trial hours;

19 (h) During trial, counsel are encouraged to exchange lists of the next day's  
20 witnesses and exhibits so that objections or legal issues may be anticipated and resolved  
21 outside the normal trial hours;

22 (i) Counsel shall have the next witness to be called to testify available on the  
23 Ninth Floor, to avoid delay; and

24 (j) If the Defendant is represented by CJA appointed counsel, the indigent  
25 Defendant's requests for issuance of subpoenas and payment of costs and fees for trial  
26 witnesses shall be filed no later than ten (10) days before trial, excluding weekends and

1 holidays. Defense counsel may request, as needed, that the motion and order be filed under  
2 seal. Defense counsel shall prepare a proposed order that includes the following language:

3 1) That the United States Marshal shall serve the subpoenas on the  
4 witnesses identified by name, address and phone number. The subpoena shall  
state when the witnesses' appearance is requested;

5 2) The subpoenaed individual shall contact the United States Marshal  
6 in the District in which they are served so that the Marshal may make travel  
arrangements, for those witnesses requiring such arrangements;

7 3) Defense counsel shall contact the Case Administrator in the  
8 District Court Executive's office, 509-458-3400, to obtain information on how  
to make lodging arrangements for those witnesses requiring lodging; and

9 4) Any witness fees and per diem allowances shall be paid by the  
10 Government after the witness has testified. Requests for advance payment shall  
11 be directed to the United States Marshal in the district in which the witness is  
served or the United States Marshal in the district in which the witness is  
present to provide testimony.

12 (k) Counsel are informed that no CJA money is available to pay per diem  
13 expenses for indigent Defendants. Should an indigent Defendant require transportation to  
14 the trial, housing and meals during the trial, defense counsel shall apply for such travel and  
15 costs no later than ten (10) days, excluding weekends and holidays, prior to the date of the  
16 trial.

17 The District Court Executive is directed to file this Order and provide copies to  
18 counsel.

19 **DATED** this 26th day of April, 2012.

20  
21  
22 04-26-12

21 s/ Wm. Fremming Nielsen  
22 WM. FREMMING NIELSEN  
23 SENIOR UNITED STATES DISTRICT JUDGE  
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